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UNITED STATES OF AMERICA  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA,	)	Case No. CR 07-00622 JF
	)	
Plaintiff,	)	<b>APPLICATION OF THE UNITED</b>
	)	<b>STATES FOR A PRELIMINARY</b>
v.	)	<b>ORDER OF FORFEITURE</b>
	)	
MARK ALFRED FIRST,	)	
	)	
Defendant.	)	
_____	)	

The United States of America, by and through the undersigned Assistant United States Attorneys, respectfully submit this Application of the United States for Issuance of a Preliminary Order of Forfeiture in the above-captioned case. In support thereof, the United States sets forth the following:

On September 28, 2007, defendant Mark Alfred First was charged by information with violation of Title 18, United States Code, Section 2252(a)(4)(B) (Possession of Matters Containing Any Visual Depiction of Minor Engaging in Sexually Explicit Conduct). The indictment also sought criminal forfeiture, pursuant to Title 18, United States Code, Section 2253(a)(1) and (a)(3) of:

1 Hewlett Packard Pavilion Computer, serial no GFDP13420236A  
2 (hereinafter "subject property").

3 On March 26, 2008, defendant, Mark Alfred First, pled guilty to a violation of Title 18,  
4 United States Code, Section 2252, and agreed to forfeit to the United States, all of his right, title  
5 and interest in the subject property.

6 Rule 32.2 (b)(1) of the Federal Rules of Criminal Procedure provides that as soon as  
7 practicable after entering a guilty verdict or accepting a plea of guilty or nolo contendere on any  
8 count in an indictment or information with regard to which criminal forfeiture is sought, the court  
9 shall determine what property is subject to forfeiture under the applicable statute. If forfeiture of  
10 specific property is sought, the court shall determine whether the government has established the  
11 requisite nexus between the property and the offense. If the government seeks a personal money  
12 judgment against the defendant, the court shall determine the amount of money that the  
13 defendant will be ordered to pay. The court's determination may be based on evidence already in  
14 the record, including any written plea agreement or, if the forfeiture is contested, on evidence or  
15 information presented by the parties at a hearing after the verdict or finding of guilt.

16 Pursuant to Rule 32.2(b)(2), if the court finds that property is subject to forfeiture, it shall  
17 promptly enter a preliminary order of forfeiture setting forth the amount of any money  
18 judgment or directing the forfeiture of specific property without regard to any third party's  
19 interest in all or part of it. Determining whether a third party has such an interest shall be  
20 deferred until any third party files a claim in an ancillary proceeding under Rule 32.2(c).

21 Rule 32.2(b)(3) further provides that the entry of a preliminary order of forfeiture  
22 authorizes the Attorney General (or a designee) to seize the specific property subject to  
23 forfeiture; to conduct any discovery the court considers proper in identifying, locating, or  
24 disposing of the property; and to commence proceedings that comply with any statutes governing  
25 third-party rights. At sentencing - or at any time before sentencing if the defendant consents - the  
26 order of forfeiture becomes final as to the defendant and shall be made part of the sentence and  
27 included in the judgment. The court may include in the order of forfeiture conditions  
28 reasonably necessary to preserve the property's value pending any appeal.

1 The United States has established the requisite nexus between the subject property and  
2 the offense to which the defendant pled guilty. Pursuant to the provisions of Title 18, United  
3 States Code, Section 2253(a)(1) and (a)(3), any and all right, title, and interest that the defendant  
4 holds in the aforesaid property is forfeitable to the United States.

5 Upon the issuance of a Preliminary Order of Forfeiture and pursuant to Title 21, United  
6 States Code, Section 853(n), and Rule G(4)(a)(iv) of the Supplemental Rules for admiralty or  
7 Maritime Claims and Asset Forfeiture Actions, the United States will publish on  
8 [www.forfeiture.gov](http://www.forfeiture.gov), a government website for at least thirty days, notice of this Order, notice of  
9 its intent to dispose of the property in such manner as the Attorney General may direct and notice  
10 that any person, other than the defendant, having or claiming a legal interest in the property must  
11 file a petition with the Court and serve a copy on Joseph Fazioli, Assistant United States  
12 Attorney, 150 Almaden Blvd, Suite 900, San Jose, CA 95113, and/or Stephanie M. Hinds,  
13 Assistant United States Attorney, 450 Golden Gate Avenue, 9<sup>th</sup> Floor, San Francisco, CA 94102,  
14 within thirty (30) days of the final publication of notice or of receipt of actual notice, whichever  
15 is earlier. This notice shall state that the petition shall be for a hearing to adjudicate the validity  
16 of the petitioner's alleged interest in the property, shall be signed by the petitioner under penalty  
17 of perjury and shall set forth the nature and extent of the petitioner's right, title or interest in the  
18 forfeited property and any additional facts supporting the petitioner's claim and the relief sought.  
19 The United States may also, to the extent practicable, provide direct written notice to any person  
20 known to have alleged an interest in the property that is the subject of the Preliminary Order of  
21 Forfeiture, as a substitute for published notice as to those persons so notified.

22 WHEREFORE, the United States respectfully requests that this Court enter a Preliminary  
23 Order of Forfeiture which provides for the following:

- 24 a. authorizes the forfeiture of the subject property to the United States;  
25 b. directs the United States, through its appropriate agency, to seize the forfeited  
26 property forthwith; and  
27 c. directs the United States to publish on a government website for at least thirty days,  
28 notice of this Order, notice of the government's intent to dispose of the property in such manner

1 as the Attorney General may direct and provide notice that any person, other than the defendants,  
2 having or claiming a legal interest in the subject property must file a petition with the Court and  
3 serve a copy on government counsel within thirty (30) days of the final publication of notice or of  
4 receipt of actual notice, whichever is earlier.

5 Dated: April 1, 2008

Respectfully submitted,

6 JOSEPH P. RUSSONIELLO  
7 United States Attorney  
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9 /S/  
10 STEPHANIE M. HINDS  
Assistant United States Attorney  
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she caused a copy of the following documents

- **APPLICATION FOR A PRELIMINARY ORDER OF FORFEITURE;**
- **[PROPOSED] PRELIMINARY ORDER OF FORFEITURE**

to be served by electronic mail upon the person(s) identified below at their last known place of address:

Richard Peyton Pointer , Esq.  
Hinkle, Jachimowicz, Pointer & Mayron,  
2007 W. Hedding St, #100  
San Jose, CA 95128

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Executed this 1<sup>st</sup> day of April, 2008, at San Francisco, California.

/S/  
\_\_\_\_\_  
ALICIA CHIN  
Paralegal/ Asset Forfeiture Unit